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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/767,504	01/28/2004	Eric J. Lawson	LAW101	5519
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/767,504	LAWSON ET AL.
	Examiner Tramar Harper	Art Unit 3714

*-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --*

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 31 October 2007.
- 2a) This action is FINAL.
- 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-17 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All
  - b) Some \*
  - c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date _____.                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____.   | 6) <input type="checkbox"/> Other: _____.                         |

## DETAILED ACTION

### ***Response to Amendment***

Examiner acknowledges Request for Continued Examination filed 10/31/07.

Examiner acknowledges receipt of amendment/arguments filed 10/31/07. The arguments set forth are addressed herein below. Claims 1-17 are pending and Claims 1 & 16-17 are currently amended.

### ***Oath/Declaration***

The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:

It does not state that the person making the oath or declaration acknowledges the duty to disclose to the Office all information known to the person to be material to patentability as defined in 37 CFR 1.56.

To clarify applicant states "material to the examination," which is incorrect.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1 & 16-17 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed,

had possession of the claimed invention. In regards to the term "fixed" payout, the examiner respectfully submits that the specification does not contain enough, if any, disclose to determine that the predetermined payout is "fixed". Applicant suggests that "The administrator, as a business judgment, will establish payouts and payout amounts which encourage entrants to pay the entry fee in hopes of winning a substantial payout for a relatively low entry fee" implies that the payout is fixed, but the examiner respectfully disagrees. The specification also states that "the payout can vary with the ticket price". This is a clear indication that the payout is subject to change. It is clear that if a player whether first or not can identify the payout then the payout must have been predetermined.

Claims 1& 16-17 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. In regards to the term "fixed" payout, the examiner respectfully submits that the specification does not contain enough, if any, disclose to determine that the predetermined payout is "fixed". Applicant suggests that "The administrator, as a business judgment, will establish payouts and payout amounts which encourage entrants to pay the entry fee in hopes of winning a substantial payout for a relatively low entry fee" implies that the payout is fixed, but the examiner respectfully disagrees. The specification also states that "the payout can vary with the ticket price". This is a clear

indication that the payout is subject to change. It is clear that if a player whether first or not can identify the payout then the payout must have been predetermined.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 1-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hannan et al (US 2004/0029627 A1) in view of Tulley et al (US 6,688,976).**

**Claims 1, 5-7, 11-13, & 15-17:** Hannan et al discloses a lottery type game that comprises establishing winning criteria from the outcomes of a sporting event or series of events such as a golf tournament, auto race, football game, baseball game, Tour de France, car racing, etc. The criterion is selected from subjects such as placement in terms of finish, scoring totals, timing of scoring, statistical totals, or the like. The system further comprising providing the criteria to users of the lottery system (¶ 11, 18-20). The users making selections either manually or automatically/randomly and placing wagers based on such combinations or selections. If a user doesn't know what selections to make the user has the option of a "quick pick" feature, wherein the lottery system makes the selections for the user via a random number generator (¶ 75). The system is further adapted such that the system matches the selections of the users to the actual outcomes and determines a user. Furthermore, the system provides a payout to the respective winners. The system is capable of running simultaneous lotteries. For

example, a user can wager on an event such as the top four or five or six finishers of the event such as a golf tournament. The golfers are identified by the performance rankings of the golfers (¶ 11-13). The lottery system can relate to football wherein players can choose or attempt to match the six NFL teams that will score the highest points on a given weekend (time period). Other variations or permutations include season-long criteria for team sports such as wins, losses, total points scored, total points allowed, etc. In these variations the user must pick the four, five, or six finishers depending on the lottery structure. Factors that can influence winning combinations can be factors such as competing in certain venues, injury reports, weather conditions, etc (¶ 19-21). Hannan et al discloses that system can be implemented via the internet, wherein a player logs on a home page and registers to participate. The registration process consists of a player/user/entrant establishing an account by entering in personal information such as name, address, date of birth, and method of payment such as credit card information or account information. Once the information is accepted the server allows the player to participate in the game of chance. The player is capable of making a number of selections and determining the amount of drawings/games to associate the selections/combinations/permuations with. Once established and confirmed a game record is saved or recorded (¶ 46-48). The entry or selected combination is associated with an entry identification number (¶ 23) and the player's account. Each player accesses his/her gaming ticket by logging in with a password (¶ 57). All accounts are stored via a database. All wagers or bets have to be established or entered prior to the beginning of the gaming event. The outcomes of the respective

games are reported to the game server and the game server evaluates each wager ticket by comparing the combinations/selections of each ticket to the actual game outcomes. Once the winner is determined the account of the winner is updated and payout is applied. The game provider provides the winning numbers based on the results of the events (¶ 50-52). Fig. 2g illustrates an example of a golf tournament lottery wherein a player can select up to 4 to 6 finishers in the tournament. Fig. 2g illustrates at least 3 predetermined payouts that are displayed to the player to let the player know what payouts are possible (¶ 57). Furthermore, the webpage provides information with respect to rules of play, jackpot totals, upcoming lottery events, previous winning combinations (either numbers or characters)(¶ 66). Hannan et al discloses that different payouts for correct choices are possible. For example, the highest payout or jackpot is paid out for correctly selecting six out six finishers. Other payouts are paid for correct five or four finishers respectively. Furthermore, a bonus payout is paid for the correct order of finishers (¶ 73). Hannan further discloses that players do not have to enter the game via online, but can purchase actual lottery tickets (¶ 76).

Hannan discloses the above but fails to disclose fixed payouts. Hannan clearly discloses awarding predetermined payouts to players with winning combinations/permuations. However, Applicant has not disclosed that having fixed payouts provides an advantage or solves a stated problem. One of ordinary skill in the art furthermore, would have expected the lottery system of Hannan, and applicant's invention, to perform equally well with either the predetermined payouts of Hannan, or

the claimed fixed payouts because both provide the same function of providing a payout to players whose permutations match the winning combinations. Therefore, it would have been *prima facie* obvious to modify Hannan to obtain the invention with respect to claims 1 & 16-17 because such a modification would have been considered a mere design consideration which fails to patentably distinguish over the prior art of Hannan.

Hannan further excludes the number of game records limited to the number of permutations. However, Tulley et al. discloses a lottery game wherein a lottery number combination is associated with a limited number of occurrences, such as a limited number of lottery tickets or a limited number of players. Tulley discloses that a first lottery ticket associated with a combination that is not associated with any other combination has a higher expected value to a player than a second lottery ticket associated with a lottery number combination that is also associated with one or more other tickets. As a result, players may be willing to pay a higher price for the first lottery ticket. Also, the cost of the first and second lottery ticket to the lottery game provider may be the same e.g. the top prize would be the same regardless if the ticket is unique or not (Col. 1:30-34, Col. 2:14-30). Tulley discloses that in one variation all lottery tickets for a game are given unique lottery number combinations (Col. 21:30-34). Tulley's lottery system is primarily geared towards pari-mutuel games, but includes prizes or payouts that are not required to be shared (Col. 4:6-10). The lottery combinations may or may not require a specific order (Col. 4:30-33) and the combinations include numbers, alphanumeric characters, colors, shapes, and/or pictures (Col. 5:10-15). Tulley's system is playable via a paper ticket and/or the internet

(Col. 4:13-23). Tulley discloses that a player is given a "quick pick" option for randomly designating a combination (Col. 5:5-9), wherein the system retrieves a number combination identifier from the potential number combinations database (Col. 16:60-67). Tulley discloses a purchased ticket database that includes the assigned number combination, ticket identifier, retailer location, date and time, player identifier, etc (Col. 13:56-Col. 14:67). Tulley discloses a potential number combination database wherein all the possible combinations are determined and stored with a respective number combination identifier (Col. 15:5-45). Tulley discloses that the invention may be implemented in other types of lottery game such as wagering on sporting events and racing events (Col. 21:40-53). It would be obvious to one of ordinary skill in the art at the time of the invention to modify the lottery system of Hannan with the unique game records respective of possible permutations, as taught by Tulley to provide more incentive to the player. Such a modification, would give a lottery provider more opportunity to increase profits and provide larger awards (Tulley - Col. 2:13-30).

**Claim 2:** Hannan discloses a lottery ticket confirmation including the user's selections and a respective entry identification number may be given to the player via email/electronic and/or paper ticket (¶ 23, 76). Tulley discloses a paper ticket with an identification means and gaming playing information (Col. 4:13-14).

**Claims 3 & 4:** Hannan in view of Tulley fails to disclose a paper ticket with an administrative record portion having a unique game record identifier printed thereon, a perforation separating entrant portion from the administrative portion, and a payout chart respective of the permutation assigned to the entrant. However, Hannan in view

of Tulley clearly discloses a player associated with a game identifier record respective of an assigned permutation. Hannan in view of Tulley further discloses an indication of potential payouts, and both disclose an administrative database with game identifiers respective of the assigned player permutations. Players have access to the lottery game webpage that provides all of the above information (see above). Furthermore, Applicant has not disclosed that having a paper ticket with an administrative record portion having a unique game record identifier printed thereon, a perforation separating entrant portion from the administrative portion, and a payout chart respective of the permutation assigned to the entrant provides an advantage or solves a stated problem. Also, applicant further discloses that "it is clear to one skilled in the art that applicants' game of chance does not require a paper record...." and that everything done on paper can be done by a computer. This is a clear indication of equivalence. One of ordinary skill in the art furthermore, would have expected the lottery system of Hannan in view of Tulley, and applicant's invention, to perform equally well with either the webpage means of Hannan in view of Tulley, or the claimed paper card/ticket with entrant and administrative game identifiers and payout indications including permutations because both provide the same function of providing game information respective of each individual player and maintaining unique records of each player selections. Therefore, it would have been *prima facie* obvious to modify Hannan in view of Tulley to obtain the invention with respect to claims 3-4 because such a modification would have been considered a mere design consideration which fails to patentably distinguish over the prior art of Hannan in view of Tulley.

**Claims 8 & 14:** Hannan in view of Tulley discloses the above with respect to Claim 1, but excludes accessing an assigned permutation or game card/ticket by entering in a game record identifier. Hannan discloses allowing the user to access his/her game tickets/combinations/permuations by logging in to his/her account via a password, each combination is associated with a game identifier, and that entry fees are paid via a credit card transaction from the a webpage (see above). Tulley discloses a database with player identifiers and ticket identifiers associated with respective randomly assigned player permutations (see above). However, Applicant has not disclosed that having the player access the player assigned permutations or game card/ticket by entering in a game record identifier provides an advantage or solves a stated problem. One of ordinary skill in the art furthermore, would have expected the lottery system of Hannan in view of Tulley, and applicant's invention, to perform equally well with either the log-in means and unique game identifiers of Hannan in view of Tulley, or the claimed accessing an assigned permutation or game card/ticket by entering in a game record identifier because both provide the same function of securely allowing a player to view the assigned permutation that is unique to the player/entrant. Therefore, it would have been *prima facie* obvious to modify Hannan in view of Tulley to obtain the invention with respect to claims 8 because such a modification would have been considered a mere design consideration which fails to patentably distinguish over the prior art of Hannan in view of Tulley.

**Claims 9-10:** Hannan in view of Tulley discloses the above with respect to claim 1, but excludes wagering on permutations corresponding to a marathon and selecting prior

participants having times less than a predetermined maximum Hannan discloses that the lottery system is drawn towards any type of sporting event such as car racing, bicycle racing like the Tour de France, and the winning criteria can be based on **finish placement, scoring totals, timing of scoring, statistical totals or the like**. In an example of such an event, Hannan discloses that the system can relate to football wherein players can choose or attempt to match the six NFL teams that will score the highest points on a given weekend (see above). It would be obvious to one of ordinary skill in the art at the time of the invention to have modified the system of Hannan in view of Tulley such that the gaming event was a marathon/race, wherein the top participants are prior participants having a less time than a predetermined maximum and the winning criterion is based on time of completion of participants (**timing of scoring or statistical totals**). Such a modification would provide an even further sporting event to wager/bet on attracting users that prefer marathons over other sports, thus, increasing players' interest and participation.

#### ***Response to Arguments***

Applicant's arguments with respect to claims 1-17 have been considered but are moot in view of the new ground(s) of rejection.

#### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

**Moosz (US 4,692,863) discloses a lottery system that randomly generates permutations of a given range and set.**

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**Perkins (US 6,186,502) discloses a wagering system wherein players wager on sporting events with game cards.**

**Miyamoto (US 6,325,721) discloses wagering on marathon predictions.**

**Downes P.E. (US 2003/0199315) discloses wagering on pari-mutuel sporting events.**

**Seifert (US 2004/0059655) discloses various wagering on sporting events with predicted or possible permutations.**

**Dreaper (US 2004/0063484) discloses wagering on various sporting events.**

**Cannella (US 2004/0229675) discloses wagering on various permutations based on finishing order.**

**Sarno (US 6,024,641) discloses a similarly structured system.**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tramar Harper whose telephone number is (571) 272-6177. The examiner can normally be reached on 7:30am - 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Pezzuto can be reached on (571) 272-6996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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*Ronald Laneau*  
Ronald Laneau  
Primary Patent Examiner  
Art Unit 3714

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12/21/07